

APPEAL NO. 020372  
FILED MARCH 28, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 15, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury; that he did not timely notify his employer of his alleged injury, thereby relieving the respondent (carrier) of liability; and, that, consequently, he did not have disability. The claimant appealed the hearing officer's determinations on these issues on sufficiency grounds. The claimant also argued that the hearing officer erred in "not making a ruling or refusing to make a ruling" on his request to add an additional issue regarding whether the carrier timely disputed the claim. The carrier responded, urging affirmance on all points.

DECISION

Affirmed.

The claimant's request to add an issue on waiver was presumably based upon the carrier's alleged failure to contest the compensability of the claimant's injury within seven days of the date the carrier received written notice of the alleged injury. This contention by the claimant is without merit. The claimant's assertion of waiver purported to rely on the decision in Downs v. Continental Casualty Company, 32S.W.3d 260 (Tex. App.-San Antonio, 2000 pet. filed).<sup>1</sup> However, per the 1989 Act and previous Appeals Panel opinions, an issue may only be addressed at a CCH if it is certified from the benefit review conference, added at the CCH by consent of the parties or for good cause shown, or added by the hearing officer at the CCH because the issue was actually litigated in full. Section 410.151(b); Texas Workers' Compensation Commission Appeal No. 990164, decided March 15, 1999. In addition, the claimant's point on appeal is misleading because the hearing officer did deny his request to add the issue on the record, absent a showing of good cause, and told the claimant that he could proffer his request again at the end of the CCH, which he failed to do. Under this set of facts, we cannot say that the hearing officer's ruling denying the claimant's request to add the requested issue amounted to an abuse of discretion. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in deciding that the claimant did not sustain a compensable injury; that he did not timely notify his employer of his alleged injury, thereby relieving the carrier of liability; and, that, consequently, he did not have disability. The record includes medical reports indicating that the claimant complained only of numbness in his legs and for an extended period of time before the alleged date of injury,

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<sup>1</sup>Texas Workers' Compensation Commission (Commission) Advisory 2000-07, signed on August 28, 2000, states that following consultation with the Office of the Attorney General and in light of Section 410.205(b), the Commission understands that the Downs decision should not be considered as precedent at least until it becomes final upon completion of the judicial process and that the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 124.2, 124.3, and 132.17 (Rules 124.2, 124.3, and 132.17) remain in effect.

\_\_\_\_\_. The medical records also note that the claimant had a pinched nerve which was causing the numbness, particularly in his left leg. Until July 2001, no medical record indicates that the claimant's medical problems were work-related. In addition, the hearing officer's decision regarding the claimant's failure to timely notify his employer of his alleged incident is supported by documents introduced by the carrier; and the hearing officer discounted the statement of the claimant's coworker that the incident was reported in January 2001. Because we affirm the hearing officer's determinations regarding compensability and notice, we also affirm her finding that the claimant had no disability as a result of his alleged injury. The parties presented conflicting evidence regarding each issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PRENTICE-HALL CORPORATION SYSTEM, INC.  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Terri Kay Oliver  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge